

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/079,298

Patent No.: 6,112,136

Filing Date: May 12, 1998

Issue Date: August 29, 2000

Applicant(s): Paul, Steven J., et al.

Atty. Docket No.: 14566.002

Title: SOFTWARE MANAGEMENT OF AN INTELLIGENT POWER CONDITIONAL WITH BACKUP SYSTEM OPTION EMPLOYING TREN ANALYSIS FOR EARLY PREDICTION OF AC POWER LINE FAILURE

LETTER ACCOMPANYING RENEWED PETITION UNDER 37 C.F.R. 1.378(c)

Mail Stop: PETITIONS
Director for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

To the Commissioner:

This is a renewed Petition under 37 C.F.R. 1.378(c) relating to the above-noted patent. The following documents are attached hereto:

- 1) Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 C.F.R. 1.378(c)).
- 2) Request for Refund of Improper Charges of Statement under 37 C.F.R. 3.73(b), Maintenance Fee and Surcharge (copy).
- 3) Statement Under 37 C.F.R. 3.73(b), originally filed October 7, 2011 (copy).
- 4) Decision on Petition, mailed November 8, 2011 (copy).

The patent in issue is U.S. Patent 6, 112,136 – issued to Assignee (and now Petitioner) on August 29, 2000. For purposes of this Petition, the terms “Assignee” and “Petitioner” jointly refer to Uninterruptible Power Products, Inc.

On October 11, 2011, Petitioner, by the undersigned attorney, filed a Petition under 37 C.F.R. 1.378(b). The required surcharge of \$700, in addition to a small entity maintenance fee payment of \$1,425, was included with this Petition.

On November 8, 2011, a Decision on the Petition (attached) was rendered by the U.S. Patent and Trademark Office and forwarded to the Petitioner.

Referring now to Conclusion II, starting on page 6 of the Decision and continuing to page 7, Petitioner was strongly urged to file a renewed Petition stating that the delay in payment of the maintenance fee was unintentional. Referring to Conclusion III on page 7 of the Decision, Petitioner was invited to request a refund of the maintenance fee and surcharge which accompanied the Petition.

Accompanying this Letter, is Petitioner's Renewed Petition under 37 C.F.R. 1.378(c). Petitioner reminds the Patent Office that all of the appropriate fees have already been made with respect to this Petition. Accompanying the Petition is a Statement under 37 C.F.R. 3.73(b) confirming the chain of title and the fact that Petitioner is the legal owner of the Patent. The original Statement was filed with the Petition under 37 C.F.R. 137(b) on October 12, 2011.

Also attached is a copy of a Request for Refund. The original request has been forwarded to the Office of Finance as suggested in Section C, III of the Patent Office Decision mailed November 8, 2011. This Request respectfully asks for a refund of the \$1425 maintenance fee and \$700 surcharge which Petitioner paid along with the 37 C.F.R. 1.37(b) filed on October 12, 2011. Additionally, Petitioner requests a refund of the \$400 fee paid by Petitioner on October 27, 2009.

In view of the foregoing, Petitioner rightfully believes that it has fulfilled all of the necessary requirements for payment based on unintentional delay. Petitioner requests acceptance of the payment of the 7.5 year maintenance fee payment. If there are any questions regarding this Petition, please contact the undersigned Attorney. Telephone calls are welcomed and encouraged.

The Commissioner is authorized to charge any fees or credit any overpayment relating to this Petition or the Patent to Deposit Account Number 18-2055.

By Petitioner's Counsel



Charles S. Sara, Reg. No. 30492
CUSTOMER NO. 25005
DEWITT ROSS & STEVENS S.C.
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Madison, WI 53703-2865
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css@dewittross.com

I certify that this paper is being electronically submitted to the U.S. Patent and Trademark Office via the EFS-Web system on the following date:

December 9, 2011
Date of Electronic Submission

Sherril Bausness
Signature

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,112,136	2000-08-29	09079298	1998-05-12	14566.002

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity

	Fee	Code
<input type="radio"/>	3 ¼ year	(1551)
<input type="radio"/>	7 ½ year	(1552)
<input type="radio"/>	11 ½ year	(1553)

Small Entity

	Fee	Code
<input type="radio"/>	3 ¼ year	(2551)
<input checked="" type="radio"/>	7 ½ year	(2552)*Previously paid - see Letter accompanying Petition
<input type="radio"/>	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee. *Previously paid, see Letter accompanying Petition

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED


THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

- ☒ An attorney or agent registered to practice before the Patent and Trademark Office
- ☐ A sole patentee
- ☐ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.
- ☐ A joint patentee; all of whom are signing this e-petition
- ☐ The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature		Date (YYYY-MM-DD)	2011-12-09
Name	Charles S. Sara	Registration Number	30492
<p>This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.</p>			

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/079,298

Patent No.: 6,112,136

Filing Date: May 12, 1998

Issue Date: August 29, 2000

Applicant(s): Paul, Steven J., et al.

Atty. Docket No.: 14566.002

Title: SOFTWARE MANAGEMENT OF AN INTELLIGENT POWER CONDITIONAL WITH BACKUP SYSTEM OPTION EMPLOYING TREN ANALYSIS FOR EARLY PREDICTION OF AC POWER LINE FAILURE

**REQUEST FOR REFUND OF IMPROPER CHARGES OF STATEMENT UNDER 37
C.F.R. 3.73(b), MAINTENANCE FEE AND SURCHARGE**

Office of Finance
Refund Section
Commissioner for Patents
Washington, D.C. 20231

To the Commissioner:

A copy of the decision on the petition under 37 CFR § 1.378(b), filed October 12, 2011 to reinstate the above-identified patent is attached and incorporated herein in its entirety by reference (the "Decision"). The Commissioner is specifically requested to refer to Section III in the Conclusion on page 7, which references the Patent Office suggestion to request a refund of the maintenance fee and surcharge which accompanied the Petition.

On October 20, 2008, Uninterruptable Power Products, Inc. ("UPPI"), owner of U.S. Patent 6,112,136 by virtue of an Assignment recorded at Reel 009184, Frame 0533, filed a Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent and filed the appropriate Maintenance fee of \$1240 and Surcharge of \$1,640 for a total payment of \$2,880 (ATTACHMENT A).

On April 27, 2009, UPPI filed a Statement under 37 CFR 3.73(b) and paid the appropriate \$400 fee (ATTACHMENT B).

On October 12, 2011, the undersigned Attorney of Record, filed a Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent and paid the 7.5 year maintenance fee of \$1,425 and surcharge of \$700 for a total payment of \$2,125 (ATTACHMENT C).

The October 20, 2008 Petition filed by UPPI was improperly dismissed and all subsequent filings and payments were unnecessary and improper.

The Commissioner is authorized to make the appropriate refund of \$2,525 by check made payable to Dewitt Ross & Stevens by mail to the undersigned attorney and address below.

If there are any questions regarding this Request for Refund, please contact the undersigned attorney. Telephone calls are welcomed and encouraged.

Respectfully submitted,



Charles S. Sara, Reg. No. 30492
CUSTOMER NO. 25005
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Telephone: (608) 395-6784
Facsimile: (608) 252-9243
css@dewittross.com

I certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Office of Finance, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Date of Electronic Submission

December 9, 2011

Signature





UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Intellectual Property Dept.
Dewitt Ross & Stevens SC
2 East Mifflin Street
Suite 600
Madison WI 53703-2865

MAILED

NOV 08 2011

OFFICE OF PETITIONS

ON PETITION

In re Patent of
Paul et al.
Patent No.: 6,112,136
Issue Date: 08/29/2000
Application No. 09/079298
Filing or 371(c) Date: 05/12/1998
Title of Invention:
SOFTWARE MANAGEMENT OF AN
INTELLIGENT POWER
CONDITIONER WITH BACKUP SYSTEM
OPTION EMPLOYING TREND ANALYSIS
FOR EARLY PREDICTION OF AC POWER
LINE FAILURE

This is a decision on the petition under 37 CFR § 1.378(b), filed October 12, 2011, to reinstate the above-identified patent.

The petitions are DISMISSED.

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision. The petition for reconsideration should be entitled "Petition for Reconsideration under 37 CFR 1.378(e)." Any petition for reconsideration of this decision must be accompanied by a non-refundable petition fee of \$400 as set forth in 37 CFR 1.17(h).

Background

The patent issued August 29, 2000. Petitioner/Patentee could have paid the seven and one half (7½) year maintenance fee between August 29, 2007, and February 29, 2008, without a surcharge, or within the six (6) month grace period between March 1, 2008 and August 29, 2008. Petitioner/Patentee failed to do so; accordingly, the patent became expired on August 30, 2008.

The present petition

Petitioner files the present petition and provides that petitioner is the assignee of the present patent by virtue of an assignment on May 12, 1998, recorded in this Office at Reel 009184, Frame 0533. Prior to the assignment, petitioner obtained an interest in the patent through a Security Agreement conveyed to petitioner on September 27, 1991.

Petitioner and current assignee of the patent, by and through its President, Gary Jungwirth, timely paid the first 3½ year maintenance fee which was accepted by this Office without question. Thereafter, on July 28, 2004, petitioner sent a notice to this Office to change the correspondence address to that of Gary Jungwirth.

Petitioner thereafter received a Notice of Patent Expiration on September 29, 2008, and on October 20, 2008, petitioner filed a petition to accept an unintentionally delayed payment of the maintenance fee. The petition was dismissed in a decision mailed November 17, 2008, because petitioner had not established that he was authorized to act on behalf of the assignee.

On February 4, 2009, petitioner filed a facsimile message to this Office to the effect that he had telephoned this Office several times and had not received a call back from anyone. Petitioner subsequently sent a letter via facsimile to this Office attempting to resolve the matter. On April 27, 2009, petitioner filed a statement under 37 CFR 3.73(b), along with a check for \$400.00.

Petitioner in response received a letter from this Office on July 15, 2009, informing petitioner that the statement under 37 CFR 3.73(b) failed to list the Reel and Frame number for the assignment recorded for this patent.

Petitioner thereafter, on July 21, 2009, averred that he had completed the form (Statement Under 37 CFR 3.73(b)), along with payment of \$400.00.

This Office again mailed a Requirement for Information on March 16, 2010, informing petitioner that he still had not demonstrated that he was authorized to act on behalf of the assignee.

The 24-month period for filing a petition to reinstate the patent based upon unintentional delay having expired, petitioner files the present petition.

Petitioner initially takes issue with the fact that the Office challenged petitioner's right to timely pay the first maintenance fee, but thereafter the Office denied (dismissed) petitioner's petition to accept an unintentionally delayed payment of the second maintenance fee. Petitioner cites to 37 CFR 1.366, which states in relevant part that any person or organization may pay the maintenance fee. Petitioner asserts that it was reasonable for petitioner to assume that the unintentionally delayed payment of the maintenance fee would be accepted since the first maintenance fee, timely paid, was accepted.

Petitioner argues that the Security Agreement did not transfer ownership of the patent, and despite the Security Agreement petitioner should have been allowed to pay the maintenance fee

because petitioner was the rightful owner of the patent at the time payment of the seven and one half (7½) year maintenance fee was attempted.

Applicable Law, Rules and MPEP

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to timely pay a maintenance fee. A petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

- (A) the required maintenance fee set forth in 37 CFR 1.20(e)-(g);
- (B) the surcharge set forth in 37 CFR 1.20(i)(1); and
- (C) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement. (Emphasis supplied).

As language in 35 U.S.C. § 41(c)(1) is identical to that in 35 U.S.C. § 133 (i.e., “unavoidable” delay), a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. See Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm’r Pat. 1988), aff’d sub nom. Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff’d, 937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992)). See MPEP § 711.03(c) for a general discussion of the “unavoidable” delay standard.

Because 35 U.S.C. § 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. That is, an adequate showing that the delay in payment of the maintenance fee at issue was “unavoidable” within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Id. Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee’s lack of knowledge of the need to pay the maintenance fee

and the failure to receive the Maintenance Fee Reminder does not constitute unavoidable delay. See Patent No. 4,409,763, supra. See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in the Federal Register at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the Official Gazette at 1046 Off. Gaz. Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable.

Moreover, the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Opinion

Initially it is noted that petitioner is correct that anyone may pay the maintenance fee. However, once the patent is expired, one of the requirements of a grantable petition to accept an unintentionally delayed payment of the maintenance fee is a statement that the delay in payment of the maintenance fee was unintentional. The statement is only acceptable from a party responsible for payment of the maintenance fee.

In this instance, petitioner attempted to pay the maintenance fee based upon an unintentionally delayed payment, but failed to demonstrate that he was authorized to pay the maintenance fee on behalf of the party responsible for payment of the maintenance fee, the assignee.

The applicable rule, 37 CFR 1.378(d), states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest." (Emphasis supplied).

Petitioner repeatedly failed to demonstrate that he was authorized to act on behalf of the assignee. The applicable rule 37 CFR 3.73(b), provides:

(1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

(i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment). For trademark matters only, the documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office. For patent matters only, the submission of the documentary evidence must be accompanied by a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or

(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(Emphasis supplied).

Petitioner failed to provide either “documentary evidence of a chain of title from the original owner to the assignee,” or “a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).”

As to petitioner’s attempts to contact this Office via telephone, petitioner is directed to 37 CFR 1.2, which states:

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

Regarding unavoidable delay, as noted *supra*, language in 35 U.S.C. § 41(c)(1) is identical to that in 35 U.S.C. § 133 (i.e., “unavoidable” delay), and a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. The standard for revival of an abandoned application makes it clear that a delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP, however, does not constitute “unavoidable” delay. See *Haines*, 673 F. Supp. at 317, 5 USPQ2d at 1132; *Vincent v. Mossinghoff*, 230 USPQ 621, 624 (D.D.C. 1985); *Smith v. Diamond*, 209 USPQ 1091 (D.D.C. 1981); *Potter v. Dann*, 201 USPQ 574 (D.D.C. 1978); *Ex parte Murray*, 1891 Dec. Comm’r Pat. 130, 131 (1891).

Moreover, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See *In re Sivertz*, 227 USPQ 255, 256 (Comm'r Pat. 1985).

It was petitioner's responsibility to either retain counsel or to familiarize himself with the laws, rules of practice and MPEP. The rules of practice do not diverge depending upon whether one is an attorney or an applicant appearing before this office in proper person. It is Applicant's obligation to inform himself about the obligations associated with prosecuting his application. See, *California Med. Prods. V. Tecnol Med.*, 921 F.Supp 1219 (D. Del. 1995).

Conclusion

Patentee has failed to demonstrate that the failure to pay the maintenance fee was unavoidable.

The petition is dismissed.

Petitioner's current options

I. Petitioner may file a request for reconsideration.

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision. The petition for reconsideration should be entitled "Petition for Reconsideration under 37 CFR 1.378(b)." Any petition for reconsideration of this decision must be accompanied by a non-refundable petition fee of \$400 as set forth in 37 CFR 1.17(h).

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that it is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to 'show' that the delay was unavoidable. Therefore, if a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

II. Petitioner may file a (renewed) petition stating that the delay was unintentional¹.

¹ Under 35 U.S.C. 41(c)(1), the Director of the Office may accept late payment of any maintenance fee filed within 24 months after the 6-month grace period, if the delay in payment is shown to the satisfaction of the Director of the Office to have been unintentional. Here, the maintenance fee was filed within 24 months after the six month grace period had expired, and a renewed petition under 37 CFR 1.378(c) based upon an unintentionally delayed payment of the maintenance fee is available.

Patentee is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in was “unavoidable.” An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the required fee.

37 CFR 1.378(c) states that “any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and must include:

- III. Petitioner may request a refund of the maintenance fee and surcharge which accompanied the petition.

Applicant is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

By mail:

**Mail Stop PETITIONS
Director for Patents
PO Box 1450
Alexandria, VA 22313-1450**

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

ATTACHMENT A

UNINTERRUPTIBLE POWER PRODUCTS

Telephone: (608) 339-2151

Fax: (608) 339-4494

www.uppi-ups.com

1567 W. 11th Drive

Friendship, WI 53934

Date: 10-20-08 (Number of pages including this cover) 5

Attention: USPTO 571-273-8300

From: GARY JUNGWIRTH

Please find enclosed Petition
to accept unintentionally delayed payment
of maintenance fee along with credit
card payment form.

Any ques., you can reach me
at the above telephone #

Gary
President UPP

Manufacturers of the world's first smart Power Conditioner
Uninterruptible Power Supplies • Replacement Batteries

**PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))**

Docket Number (Optional)
M-553

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent No. 6112136 Application Number 09079298
Issue Date 08/29/00 Filing Date 05/12/98

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above - identified patent:

- ☐ is a reissue of original Patent No. _____ original issue date _____
original application number _____
original filing date _____
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application _____ filed on _____

CERTIFICATE OF MAILING (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

10/20/08
Date

Gray Fungworth President
UPAT
Typed or printed name of person signing Certificate

[Page 1 of 3]

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-0199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 1/2 yr fee	(1551)	<input type="checkbox"/> \$ _____	3 1/2-yr fee	(2551)
<input type="checkbox"/> \$ _____	7 1/2 yr fee	(1552)	<input checked="" type="checkbox"/> \$ <u>1240.00</u>	7 1/2 yr fee	(2552)
<input type="checkbox"/> \$ _____	11 1/2 yr fee	(1553)	<input type="checkbox"/> \$ _____	11 1/2 yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 1240.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(f)(2) of \$ 1640.00 (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

SURCHARGE BEING SUBMITTED \$ 1640.00

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____
- ☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. _____

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

7. OVERPAYMENT

As to any overpayment made please

☐

Credit to Deposit Account No. _____

OR

☒

Send refund check

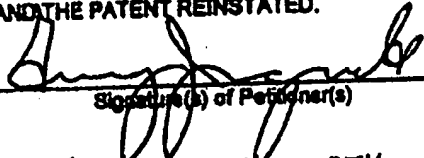
WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identify theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

9. PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

(X)  10/20/08
Signature(s) of Petitioner(s) Date
GARY JUNEWIRTH
Typed or printed name(s)
608-339-2151
Telephone Number
1567 W 11th DR FRIENDSHIP WI 53934
Address
Address

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

ENCLOSURES:

☒

Maintenance Fee payment

☒

Surcharge under 37 CFR 1.20(f)(2) (fee for filing the maintenance fee petition)

☐

Credit Card Payment Form

(Do not submit this form electronically via EFS-Web)
Please Read Instructions before Completing this Form

Credit Card Information

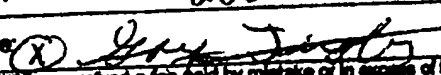
Credit Card Type: ☒ Visa ☐ MasterCard ☐ American Express ☐ Discover

Credit Card Account #:

Credit Card Expiration Date: 05/31/09

Name as it Appears on Credit Card: GARY JUNGWIRTH

Payment Amount: \$ (US Dollars): \$2880-

Cardholder Signature:  Date: 10/20/08

Refund Policy: The USPTO may refund a fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The USPTO will not refund amounts of \$25.00 or less unless a refund is specifically requested and will not notify the payor of such amounts (37 CFR 1.26). Refund of a fee paid by credit card will be issued as a credit to the credit card account to which the fee was charged.
Service Charge: There is a \$50.00 service charge for processing each payment refused (including a check returned "unpaid") or charged back by a financial institution (37 CFR 1.21 (m)).

Credit Card Billing Address

Street Address 1: 1567 W 11th DR

Street Address 2:

City: FRIENDSHIP

State/Province: WI

Zip/Postal Code: 53934

Country: USA

Daytime Phone #: 608-339-2151

Fax #: 608-339-4484

Request and Payment Information

Description of Request and Payment Information:

<input type="checkbox"/> Patent Fee	<input checked="" type="checkbox"/> Patent Maintenance Fee	<input type="checkbox"/> Trademark Fee	<input type="checkbox"/> Other Fee
Application No.	Application No. 09079298	Application No.	IDON Customer No.
Patent No.	Patent No. 6112136	Registration No.	
Attorney Docket No.		Identify or Describe Mark	

If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form or submits this form electronically via EFS-Web, the United States Patent and Trademark Office will not be liable in the event that the credit card number becomes public knowledge.

ATTACHMENT B

SENT 4/27/09 ALONG W/ \$400 CHECK

PTO/SB/96 (03-09)

Approved for use through 04/30/2009. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: Uninterruptible Power Products, Inc
Application No./Patent No.: 6,112,136 Filed/Issue Date: AUGUST 29, 2000
Titled: SOFTWARE MANAGEMENT OF AN INTELLIGENT POWER CONDITIONER WITH BACKUP SYSTEM OPTION EMPLOYING TREND ANALYSIS FOR EARLY PREDICTION OF AC POWER LINE FAILURE
Uninterruptible Power Products, Inc CORPORATION
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest in;
 2. ☐ an assignee of less than the entire right, title, and interest in (The extent (by percentage) of its ownership interest is _____ %); or
 3. ☐ the assignee of an undivided interest in the entirety of (a complete assignment from one of the joint inventors was made)
- the patent application/patent identified above, by virtue of either:
- A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy therefore is attached. 0533
010268
- OR
- B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
2. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
3. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet(s).

☐ As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

(NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08)

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

GARY KUNG WIRTH
Signature
Printed or Typed Name

4/27/09
Date
PRESIDENT
Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Grand Marsh State Bank

Statement Date: 5/29/2009

Account: 117671

Page: 3

DATE	DEPOSIT TICKET	AMOUNT	CHECK	STATEMENT
5/5/2009	DEPOSIT TICKET UNIVERSITY POWER PRODUCTS, INC. 17,100.00 100.00 100.00 17,300.00	17,300.00		18,299.78
5/5/2009	UNIVERSITY POWER PRODUCTS, INC. 17,100.00 100.00 100.00 17,300.00	17,300.00		9251 60.00
5/7/2009	DEPOSIT TICKET UNIVERSITY POWER PRODUCTS, INC. 6,818.56 100.00 100.00 7,018.56	7,018.56		6,898.56
5/7/2009	UNIVERSITY POWER PRODUCTS, INC. 6,818.56 100.00 100.00 7,018.56	7,018.56		9263 400.00
5/12/2009	DEPOSIT TICKET UNIVERSITY POWER PRODUCTS, INC. 300.75 100.00 100.00 500.75	500.75		618.15
5/12/2009	UNIVERSITY POWER PRODUCTS, INC. 300.75 100.00 100.00 500.75	500.75		9264 1,403.58
5/19/2009	DEPOSIT TICKET UNIVERSITY POWER PRODUCTS, INC. 1,000.00 1,000.00 100.00 2,100.00	2,100.00		14,537.19
5/19/2009	UNIVERSITY POWER PRODUCTS, INC. 1,000.00 1,000.00 100.00 2,100.00	2,100.00		9265 1,648.18
5/21/2009	DEPOSIT TICKET UNIVERSITY POWER PRODUCTS, INC. 1,000.00 1,000.00 100.00 2,100.00	2,100.00		3,002.20
5/21/2009	UNIVERSITY POWER PRODUCTS, INC. 1,000.00 1,000.00 100.00 2,100.00	2,100.00		9266 1,587.03
5/28/2009	DEPOSIT TICKET UNIVERSITY POWER PRODUCTS, INC. 1,000.00 1,000.00 100.00 2,100.00	2,100.00		6,534.83
5/28/2009	UNIVERSITY POWER PRODUCTS, INC. 1,000.00 1,000.00 100.00 2,100.00	2,100.00		9267 6,994.90

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**Docket Number (Optional)
14566.002Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at
(571) 272-3282.Patent Number: 6,112,136Application Number: 09/079,298Issue Date: August 29, 2000Filing Date: May 12, 1998

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.386(c) and (d).

Also complete the following information, if applicable:

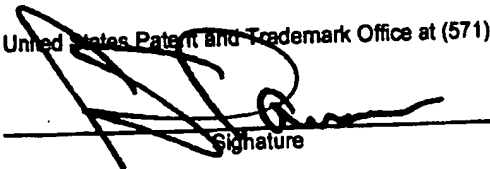
The above-identified patent

☐ is a reissue of original Patent No. _____ original issue date _____;
original application number _____
original filing date _____☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Oct 11, 2004
Date
Signature

Charles S. Sara

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ 1425	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 1425

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____
- ☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 182055

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. _____

OR

☒ Send refund check

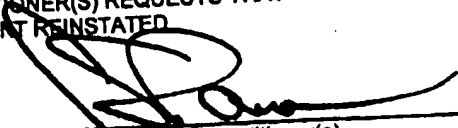
WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED



Signature(s) of Petitioner(s)

11 October 2011
Date

Charles S. Sara

Typed or printed name(s)

30492

Registration Number, if applicable

2 E. Mifflin Street, Suite 600

Address

608-255-8891

Telephone Number

Madison, WI 53703

Address

ENCLOSURES:

- ☒ Maintenance Fee Payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(I)(1) (fee for filing the maintenance fee petition)
☒ Other: Petition under 37 C.F.R. 1.378(b) with attachments

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."



Signature

11 October 2011
Date

Charles S. Sara
Type or printed name

30492
Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See attached Petition under 37 C.F.R. 1.378(b) for full statement of explanation.

(Please attach additional sheets if additional space is needed)

STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: Paul, Steven J. et al.

Application No./Patent No.: 09/079,298 / 6,112,136 Filed/Issue Date: 6/12/1998 / 8/29/2000

Title: Software Management of an Intelligent Power Conditioner with Backup System Option Employing Trend Analysis for Early Prediction of AC Power Line Failure

Uninterruptible Power Products, Inc. , a Corporation

(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest in;
2. ☐ an assignee of less than the entire right, title, and interest in (The extent (by percentage) of its ownership interest is _____ %); or
3. ☐ the assignee of an undivided interest in the entirety of (a complete assignment from one of the joint inventors was made)

the patent application/patent identified above, by virtue of either:

- A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

- B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: Paul Steven J. et al To: Uninterruptible Power Products, Inc.

The document was recorded in the United States Patent and Trademark Office at Reel 009184, Frame 0633, or for which a copy thereof is attached.

2. From: Uninterruptible Power Products, Inc. To: Adams County

The document was recorded in the United States Patent and Trademark Office at Reel 010268, Frame 0828, or for which a copy thereof is attached.

3. From: Adams County To: Uninterruptible Power Products, Inc.

The document was recorded in the United States Patent and Trademark Office at Reel 026486, Frame 0466, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet(s).

☐ As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

(NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.06)

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

William Stark
Signature

10/07/11
Date

William Stark

President

Printed or Typed Name

Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to the (and by the USPTO to present) an application. Confidentiality is governed by 36 U.S.C. 126 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1489, Alexandria, VA 22313-1489. DO NOT SEND PERS OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Comptroller for Patents, P.O. Box 1489, Alexandria, VA 22313-1489.

If you need assistance in completing the form, call 1-800-PTO-0199 and select option 2.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Intellectual Property Dept.
Dewitt Ross & Stevens SC
2 East Mifflin Street
Suite 600
Madison WI 53703-2865

MAILED

NOV 08 2011

OFFICE OF PETITIONS

ON PETITION

In re Patent of
Paul et al.
Patent No.: 6,112,136
Issue Date: 08/29/2000
Application No. 09/079298
Filing or 371(c) Date: 05/12/1998
Title of Invention:
SOFTWARE MANAGEMENT OF AN
INTELLIGENT POWER
CONDITIONER WITH BACKUP SYSTEM
OPTION EMPLOYING TREND ANALYSIS
FOR EARLY PREDICTION OF AC POWER
LINE FAILURE

This is a decision on the petition under 37 CFR § 1.378(b), filed October 12, 2011, to reinstate the above-identified patent.

The petitions are DISMISSED.

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision. The petition for reconsideration should be entitled "Petition for Reconsideration under 37 CFR 1.378(e)." Any petition for reconsideration of this decision must be accompanied by a non-refundable petition fee of \$400 as set forth in 37 CFR 1.17(h).

Background

The patent issued August 29, 2000. Petitioner/Patentee could have paid the seven and one half (7½) year maintenance fee between August 29, 2007, and February 29, 2008, without a surcharge, or within the six (6) month grace period between March 1, 2008 and August 29, 2008. Petitioner/Patentee failed to do so; accordingly, the patent became expired on August 30, 2008.

The present petition

Petitioner files the present petition and provides that petitioner is the assignee of the present patent by virtue of an assignment on May 12, 1998, recorded in this Office at Reel 009184, Frame 0533. Prior to the assignment, petitioner obtained an interest in the patent through a Security Agreement conveyed to petitioner on September 27, 1991.

Petitioner and current assignee of the patent, by and through its President, Gary Jungwirth, timely paid the first 3½) year maintenance fee which was accepted by this Office without question. Thereafter, on July 28, 2004, petitioner sent a notice to this Office to change the correspondence address to that of Gary Jungwirth.

Petitioner thereafter received a Notice of Patent Expiration on September 29, 2008, and on October 20, 2008, petitioner filed a petition to accept an unintentionally delayed payment of the maintenance fee. The petition was dismissed in a decision mailed November 17, 2008, because petitioner had not established that he was authorized to act on behalf of the assignee.

On February 4, 2009, petitioner filed a facsimile message to this Office to the effect that he had telephoned this Office several times and had not received a call back from anyone. Petitioner subsequently sent a letter via facsimile to this Office attempting to resolve the matter. On April 27, 2009, petitioner filed a statement under 37 CFR 3.73(b), along with a check for \$400.00.

Petitioner in response received a letter from this Office on July 15, 2009, informing petitioner that the statement under 37 CFR 3.73(b) failed to list the Reel and Frame number for the assignment recorded for this patent.

Petitioner thereafter, on July 21, 2009, averred that he had completed the form (Statement Under 37 CFR 3.73(b)), along with payment of \$400.00.

This Office again mailed a Requirement for Information on March 16, 2010, informing petitioner that he still had not demonstrated that he was authorized to act on behalf of the assignee.

The 24-month period for filing a petition to reinstate the patent based upon unintentional delay having expired, petitioner files the present petition.

Petitioner initially takes issue with the fact that the Office challenged petitioner's right to timely pay the first maintenance fee, but thereafter the Office denied (dismissed) petitioner's petition to accept an unintentionally delayed payment of the second maintenance fee. Petitioner cites to 37 CFR 1.366, which states in relevant part that any person or organization may pay the maintenance fee. Petitioner asserts that it was reasonable for petitioner to assume that the unintentionally delayed payment of the maintenance fee would be accepted since the first maintenance fee, timely paid, was accepted.

Petitioner argues that the Security Agreement did not transfer ownership of the patent, and despite the Security Agreement petitioner should have been allowed to pay the maintenance fee

because petitioner was the rightful owner of the patent at the time payment of the seven and one half (7½) year maintenance fee was attempted.

Applicable Law, Rules and MPEP

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to timely pay a maintenance fee. A petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

- (A) the required maintenance fee set forth in 37 CFR 1.20(e)-(g);
- (B) the surcharge set forth in 37 CFR 1.20(i)(1); and
- (C) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement. (Emphasis supplied).

As language in 35 U.S.C. § 41(c)(1) is identical to that in 35 U.S.C. § 133 (i.e., "unavoidable" delay), a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. See Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd sub nom. Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff'd, 937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992)). See MPEP § 711.03(c) for a general discussion of the "unavoidable" delay standard.

Because 35 U.S.C. § 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Id. Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee

and the failure to receive the Maintenance Fee Reminder does not constitute unavoidable delay. See Patent No. 4,409,763, *supra*. See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in the Federal Register at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the Official Gazette at 1046 Off. Gaz. Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable.

Moreover, the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Opinion

Initially it is noted that petitioner is correct that anyone may pay the maintenance fee. However, once the patent is expired, one of the requirements of a grantable petition to accept an unintentionally delayed payment of the maintenance fee is a statement that the delay in payment of the maintenance fee was unintentional. The statement is only acceptable from a party responsible for payment of the maintenance fee.

In this instance, petitioner attempted to pay the maintenance fee based upon an unintentionally delayed payment, but failed to demonstrate that he was authorized to pay the maintenance fee on behalf of the party responsible for payment of the maintenance fee, the assignee.

The applicable rule, 37 CFR 1.378(d), states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest." (Emphasis supplied).

Petitioner repeatedly failed to demonstrate that he was authorized to act on behalf of the assignee. The applicable rule 37 CFR 3.73(b), provides:

(1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

- (i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment). For trademark matters only, the documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office. For patent matters only, the submission of the documentary evidence must be accompanied by a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or
- (ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(Emphasis supplied).

Petitioner failed to provide either “documentary evidence of a chain of title from the original owner to the assignee,” or “a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).”

As to petitioner’s attempts to contact this Office via telephone, petitioner is directed to 37 CFR 1.2, which states:

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

Regarding unavoidable delay, as noted supra, language in 35 U.S.C. § 41(c)(1) is identical to that in 35 U.S.C. § 133 (i.e., “unavoidable” delay), and a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. The standard for revival of an abandoned application makes it clear that a delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP, however, does not constitute “unavoidable” delay. See Haines, 673 F. Supp. at 317, 5 USPQ2d at 1132; Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm’r Pat. 130, 131 (1891).

Moreover, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See *In re Sivertz*, 227 USPQ 255, 256 (Comm'r Pat. 1985).

It was petitioner's responsibility to either retain counsel or to familiarize himself with the laws, rules of practice and MPEP. The rules of practice do not diverge depending upon whether one is an attorney or an applicant appearing before this office in proper person. It is Applicant's obligation to inform himself about the obligations associated with prosecuting his application. See, *California Med. Prods. V. Tecnol Med.*, 921 F.Supp 1219 (D. Del. 1995).

Conclusion

Patentee has failed to demonstrate that the failure to pay the maintenance fee was unavoidable.

The petition is dismissed.

Petitioner's current options

I. Petitioner may file a request for reconsideration.

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision. The petition for reconsideration should be entitled "Petition for Reconsideration under 37 CFR 1.378(b)." Any petition for reconsideration of this decision must be accompanied by a non-refundable petition fee of \$400 as set forth in 37 CFR 1.17(h).

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that it is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to 'show' that the delay was unavoidable. Therefore, if a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

II. Petitioner may file a (renewed) petition stating that the delay was unintentional¹.

¹ Under 35 U.S.C. 41(c)(1), the Director of the Office may accept late payment of any maintenance fee filed within 24 months after the 6-month grace period, if the delay in payment is shown to the satisfaction of the Director of the Office to have been unintentional. Here, the maintenance fee was filed within 24 months after the six month grace period had expired, and a renewed petition under 37 CFR 1.378(c) based upon an unintentionally delayed payment of the maintenance fee is available.

Petition to reinstate based upon an unintentionally delayed payment of the maintenance fee under 37 CFR 1.378(c)

Patentee is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in was “unavoidable.” An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the required fee.

The filing of a petition under 37 CFR 1.378(c) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to reinstate under 37 CFR 1.378(c), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition to reinstate the patent under 37 CFR 1.378(c).

37 CFR 1.378(c) states that “any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and must include:

- (1) The required maintenance fee set forth in § 1.20 (e) through (g);
- (2) The surcharge set forth in § 1.20(i)(2); and
- (3) A statement that the delay in payment of the maintenance fee was unintentional.

III. Petitioner may request a refund of the maintenance fee and surcharge which accompanied the petition.

Petitioner may request a refund of the maintenance fee and surcharge by writing to the Office of Finance, Refund Section, Commissioner for Patents, Washington, DC, 20231. A copy of this decision should accompany petitioner's request.

Applicant is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

**Mail Stop PETITIONS
Director for Patents
PO Box 1450
Alexandria, VA 22313-1450**

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions